No. 741

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

TRI-CONTINENTAL FINANCIAL CORPORATION, A. C. ALLYN AND COMPANY, INCORPORATED, AMERICAN TRANSPORTATION ENTERPRISES, INC., EQUITABLE SECURITIES CORPORATION, CARL M. LOEB, RHOADES & CO., THE ROBINSON-HUMPHREY COMPANY, INC. and JOHN W. CLARKE & CO.,

*Petitioners,*

*v.*

UNITED STATES OF AMERICA,

and

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

*Respondents.*

**PETITION FOR WRIT OF CERTIORARI**

No. .....

TRI-CONTINENTAL FINANCIAL CORPORATION, A. C. ALLYN AND COMPANY, INCORPORATED, AMERICAN TRANSPORTATION ENTERPRISES, INC., EQUITABLE SECURITIES CORPORATION, CARL M. LOEB, RHOADES & CO., THE ROBINSON-HUMPHREY COMPANY, INC. and JOHN W. CLARKE & CO.,

*Petitioners,*

*v.*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT,

*Respondent.*

**MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS OR OTHER APPROPRIATE WRIT**

Misc. No. 812

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February 29, 1960.

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT,

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

## MOTION FOR LEAVE TO FILE A PETITION FOR MANDAMUS OR OTHER APPROPRIATE WRIT.

Tri-Continental Financial Corporation (Tri-Continental), A. C. Allyn and Company, Incorporated, American Transportation Enterprises, Inc., Equitable Securities Corporation, Carl M. Loeb, Rhoades & Co., The Robinson-Humphrey Company, Inc. and John W. Clarke & Co. (collectively "the Banking Group") pray that a writ of certiorari issue to review a judgment entered by the United States Court of Appeals for the Second Circuit on January 29, 1960.

This judgment directed the United States District Court for the Southern District of New York (John F. X. McGohey, J.) to vacate a judgment rendered by it on July 10, 1959 dismissing a complaint brought by the United States against the Banking Group and The New York, New Haven, and Hartford Railroad Company (New Haven).

In the alternative, in the event this Court should deem the petition for certiorari an inappropriate method to review a judgment in patent excess of the jurisdiction of the Court of Appeals for the Second Circuit, petitioners move for leave to file a petition for mandamus or other appropriate writ directed to the Court of Appeals for the Second Circuit.

## Opinions Below.

The basic opinion of the District Court (R. 97a-105a)[1] is printed as Appendix A hereto and is reported at 170 F. Supp. 562. A brief second opinion (R. 109a) providing for an uncontested formal amendment of the trial court's original judgment is reported at 175 F. Supp. 873.

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[1] "R" refers to the certified record which consists of two "volumes"—volume I containing the printed record filed by the United States in the Court of Appeals and volume II the proceedings in that court. Volume I is paged from 1a through 112a, volume II from 1 through 131; thus, the presence or absence of the letter "a" in the page reference serves to identify the volume.

There are three opinions of the Court of Appeals, all as yet unreported. One, rendered on November 2, 1959, reversing the judgment of the District Court (R. 15-34), and another, dated December 2, 1959, denying the Banking Group's petition for rehearing (R. 69), are printed as Appendix C hereto. A third, dated January 29, 1960, which withdrew the Court of Appeals' decision of November 2 and directed entry of the judgment from which petitioners seek review (R. 94-118), is printed as Appendix B hereto.

The question presented by this Petition concerns the appellate powers of the Court of Appeals, and only the third opinion of the Court of Appeals (App. B) bears on that issue.

## Jurisdiction.

The judgment of the Court of Appeals was dated and entered on January 29, 1960. (R. 121). Petitioners did not seek a rehearing. The jurisdiction of this Court to issue a writ of certiorari to the Court of Appeals is invoked under 28 U. S. C. §1254(1) (1958).

The jurisdiction of this Court to issue a writ of mandamus or other appropriate writ to the Court of Appeals is invoked under 28 U. S. C. §1651 (a) (1958).

## Question Presented.

The United States filed suit against the Banking Group and the New Haven in the District Court for the Southern District of New York seeking an injunction against an alleged violation of §20a of the Interstate Commerce Act.[2] From an adverse judgment dismissing its complaint, the Government appealed to the Court of Appeals for the

[2] 41 Stat. 494 (1920), as amended, 49 U. S. C. §20a (1958).